

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WILLIE DAVIS, JR., NATHANIEL *
BRIDDELL, JOSEPH GARRISON, *
LARRY E. GIBBS, ROY H. WALTERS, *
and ALL SIMILARLY-SITUATED *
CURRENT AND FORMER EMPLOYEES *
OF MOUNTAIRE FARMS, INC., *
MOUNTAIRE FARMS OF DELMARVA *
INC., and MOUNTAIRE FARMS OF *
DELAWARE, INC., *

Plaintiffs,

v.

MOUNTAIRE FARMS, INC., a Delaware *
Corporation, MOUNTAIRE FARMS OF *
DELMARVA, a Delaware Corporation, *
and MOUNTAIRE FARMS OF *
DELAWARE, INC., a Delaware *
Corporation, *

Defendants.

Civil Action No. 04-414 – KAJ

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION
TO EXTEND TIME IN WHICH TO RESPOND TO
PLAINTIFFS' ANSWERING BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs, by and through their undersigned counsel, hereby respond to
Defendants' Motion To Extend Time In Which To Respond To Plaintiffs' Answering
Brief in Opposition to Defendants' Motion For Partial Summary Judgment opposing
same on the following basis:

1. While it is acknowledged and appreciated by Plaintiffs' counsel that
Defendants agreed to an extension until October 13, 2006 to file Plaintiffs' Answering
Brief, Plaintiffs' counsel, at no time, agreed to a three-week extension for Defendants'

filing of their Reply Brief. The reason for Plaintiffs' reluctance to allow such an extension was solely motivated by the Court's impending move from the United States District Court to the U.S. Court of Appeals. Plaintiffs' concern has been, all along, that this matter be fully briefed so as to allow the Court an opportunity to consider and rule upon Defendants' Motion for a Partial Summary Judgment before departure to the U.S. Court of Appeals.

2. It is well understood that if this motion is pending at the time of the Court's departure, it is likely that this motion may not be decided for at least eight to ten months.

3. Contrary to defense counsel's representation regarding the teleconference between Plaintiffs' counsel and attorneys Brewer and Scheinberg on October 12, Plaintiffs' counsel did not represent that there was a "need for additional time." Rather, Plaintiffs' counsel acknowledged that the brief was due on the following day, October 13, and that it may be necessary to request an extension of two or three days in order to complete the brief. Fortunately, Plaintiffs' counsel was able to complete the brief and file same at 12:28 p.m. on October 13.

4. At no time did Plaintiffs' counsel actually seek an extension, nor was there a stipulation executed in order to request an extension. Plaintiffs' counsel instead represented during the October 12 teleconference that if there was a need for same he would contact defense counsel. Again, Plaintiffs' counsel expressed his appreciation to defense counsel for the willingness to grant a two or three day extension. At that time, defense counsel did state that if a two to three day extension were granted to Plaintiffs,

defense counsel would then request an extension until mid-November due to the vacation schedule.

5. On Tuesday, October 17, defense counsel contacted Plaintiffs' counsel by telephone advising that they had just received the brief and that they were requesting an extension until mid-November. Plaintiffs' counsel, after conferring with colleagues, expressed his regret to defense counsel advising them that a limited extension could be granted as Plaintiffs' counsel would be amenable to an extension until October 25, but not amenable to an extension until mid-November. The reason stated was Plaintiffs' economic interests could be severely prejudiced by a period of eight to ten months if Defendants' motion was not ruled upon by the Court.

6. Plaintiffs' counsel recognizes that this is indeed a very unusual circumstance and has never before refused a colleague's request for a continuance. However, in this case, Plaintiffs' interests far outweighed the need for defense counsel to have more than twelve days to file a reply brief in this matter.

WHEREFORE, Plaintiffs' counsel respectfully requests an extension of time be granted in this matter extending the date for Defendants Reply Brief to October 25, 2006.

MARGOLIS EDELSTEIN

/s/ Jeffrey K. Martin
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Dated: October 19, 2006